

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

FREDERICK WININGEAR,

Appellant

v.

TREASURER OF THE STATE OF MISSOURI-CUSTODIAN 2ND INJURY FUND.

Respondent

DOCKET NUMBER WD78398

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 3, 2015

Appeal From:

LABOR AND INDUSTRIAL RELATIONS COMMISSION

Appellate Judges:

Division Two

Mark D. Pfeiffer, P.J., Lisa White Hardwick, and James Edward Welsh, JJ.

Attorneys:

Christine Kiefer, Jefferson City, MO

Counsel for Appellant

Attorneys:

Maggie Ahrens, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**FREDERICK WININGEAR, Appellant, v. TREASURER OF THE STATE OF
MISSOURI-CUSTODIAN 2ND INJURY FUND, Respondent**

WD78398

Labor and Industrial Relations

Before Division Two Judges: Pfeiffer, P.J., Hardwick, and Welsh, JJ.

Frederick Winingear suffered a permanent partial injury in the course and scope of his employment. He reached a compromise settlement with his employer for that "primary" work injury and then filed a claim against Missouri's Second Injury Fund based on the combination of the primary injury and his pre-existing injuries. The Labor and Industrial Relations Commission found that Winingear had satisfied some requirements for Fund liability, *i.e.*, his primary injury resulted in a permanent partial disability, and, at the time of the primary injury, he had preexisting permanent partial disabilities that constituted a hindrance or obstacle to employment. The Commission denied the claim, however, because "the credible and convincing evidence [did] not establish that there was the required *synergy* between the primary injury and the pre-existing condition(s)." Winingear appealed the denial of his claim against the Fund.

Affirmed.

Division Two holds:

The Commission did not err in concluding that there was insufficient evidence of a "synergistic effect" to trigger Second Injury Fund liability. Applying the proper standard for judicial review, which requires deferral to the Commission on the weight of the evidence and witness credibility, there was competent and substantial evidence to support the Commission's denial of Fund liability. Winingear presents no argument on appeal that would permit a reversal of the Commission's Award under that standard of review.

The Commission did not err in declining to rule on whether Winingear's claim against the Fund was time barred. The denial of his claim on the issue of synergy was dispositive of the case and, thus, the timeliness issue was not essential to disposition of the case and should not be addressed.

Opinion by James Edward Welsh, Judge

November 3, 2015

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